IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.234 OF 2006
IN
APPEAL FROM ORDER NO.815 OF 2005
FROM
NOTICE OF MOTION NO.2282 OF 2005
IN
L.C.SUIT NO.2518 OF 2005
WITH
CIVIL APPLICATION NO.955 OF 2005

Jari Mari Co-op.Hsg.Soc.Ltd. ...Applicants

Versus

Shamshad Begum Abdul Hamid Khan
& Ors. ...Respondents

.....

Mr.Pooniwala i/b Ivor Peter D'Cruz for Applicants.

Mr.J.S.Kini for Respondent No.1.

Mr.R.A.Malandkar for Respondent No.2.

Ms.A.R.Uchitkar i/b M/s.Utangale & Co. for
Respondent No.4.

Mr.Shrikant Shah for Respondent No.7.

.....

CORAM: A.M.KHANWILKAR, J.

MARCH 29, 2006.

P.C.

1. Following prayers have been made in this Application :

(a) The the L.C. No.2518 filed by the Respondent NO.1 herein be dismissed with exemplatory costs;

(b) That the Respondent No.1 be directed to deposit the Original Power of Attorney dated 21st June, 2005, used to file the present Suit, in this Hon'ble Court and the same be impounded;

(c) That a preliminary inquiry be ordered into the offences committed by the Respondent No.1, Shamshad Begum and her constituted attorney during the course of judicial proceeding and after recording the offences direct the Officer of this Hon'ble Court to make a Complaint to the concerned Magistrate for requisite prosecution of the Respondent No.1 in accordance with the law and/or sanction prosecution and direct the Registrar or any other officer of the Court be approved to prosecute them;

(d) That the Respondent No.1 along with the Power of Attorney holder be taken into custody to the Court of the concerned Judicial Magistrate and/or

(e) That the hearing and final disposal of this Civil Application be expedited;

(f) In the alternative, then the pre-emptory date of hearing of the Appeal be fixed;

(g) For costs of this Application.

(h) For such further and other relief's as the nature and circumstances of the case may require."

2. It is not in dispute that the main Suit is still pending before the Trial Court. Indeed, the

Applicant may be justified in contending that it is open for this Court to pass necessary orders in terms of reliefs claimed in this Application, however, in my opinion, as the main proceedings (L.C.Suit No.2518 of 2005) is still pending before the Trial Court, the appropriate course is to relegate the parties for inviting order in terms of reliefs prayed in this Application as referred to above by the Trial Court, on its own merits in accordance with law.

3. Respondent No.1 before this Court/original Plaintiff has filed affidavit and has stated that purshis has been filed before the Trial Court for permission to withdraw the Suit itself. I hope and trust that appropriate orders will be passed by the Trial Court on the said purshis in accordance with law. All questions with regard to the order to be passed on the said purshis or for that matter, the reliefs claimed in this Application are kept open to be decided by the Trial Court in accordance with law.

4. This Application is disposed of by clarifying that the stay of the Suit granted by

this Court in the pending Appeal from Order is lifted to the limited extent of considering the question of withdrawal of Suit as per the purshis filed by the Respondent No. 1 and also for taking appropriate steps in relation to the reliefs claimed in this Application in terms of prayer clauses (a) to (d) reproduced hereinabove.

5. The Trial Court shall pass necessary orders on the purshis and the proposed application to be filed by the Applicant herein/Defendant No.4 expeditiously, preferably by end of May 2006.

. Application disposed of on the above terms.

A.M.KHANWILKAR, J.